

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

BOBBY RUTLEDGE,

Petitioner

VS.

HUGH SMITH,

Respondent

**NO. 5:07-CV-86 (WDO)**

**PROCEEDINGS UNDER 28 U.S.C. § 2254  
BEFORE THE U. S. MAGISTRATE JUDGE**

<b>ORDER AND RECOMMENDATION</b>
---------------------------------

On June 1, 2007, respondent HUGH SMITH filed a **MOTION TO DISMISS** the above-styled habeas corpus action alleging that petitioner BOBBY RUTLEDGE had **failed to exhaust his state remedies** as required by 28 U.S.C. §2254(b) and (c) and *Rose v. Lundy*, 455 U.S. 509 (1982). Tab #18. Thereafter, in response to a **MOTION TO ADDRESS ISSUES** filed by petitioner Rutledge, respondent Smith conceded that the petitioner had exhausted his state remedies. Tab #31. Accordingly, IT IS RECOMMENDED that the respondent's **MOTION TO DISMISS** be **DENIED**. Pursuant to 28 U.S.C. §636(b)(1), the parties may serve and file written objections to this RECOMMENDATION with the district judge to whom this case is assigned **WITHIN TEN (10) DAYS** after being served with a copy thereof.

Also before the court is the petitioner's **MOTION TO ADDRESS ISSUES** (Tab #29), which has been made **MOOT** by the respondent's filing of an amended response to the petition. Tab #32. Accordingly, the petitioner's motion is **DENIED**.

Finally, the petitioner has filed a **MOTION TO APPOINT COUNSEL**. Tab #37. This is Rutledge's second such request, his first having been denied as premature in an order dated April 9, 2007. In the court's April 9<sup>th</sup> Order, the undersigned made clear that the court would, on its own motion, appoint counsel "if and when it becomes apparent that legal assistance is required in order to avoid prejudice to [petitioner's] rights." Tab #9. Upon review of the facts and law involved in this case, it is still apparent that the issues are not so complicated that petitioner cannot adequately litigate his petition without assistance of counsel. Accordingly, petitioner's **Motion to Appoint Counsel** is **DENIED**.

SO ORDERED AND RECOMMENDED this 6<sup>th</sup> day of NOVEMBER, 2007.



A handwritten signature in blue ink, reading "Claude W. Hicks, Jr." in a cursive script.

CLAUDE W. HICKS, JR.  
UNITED STATES MAGISTRATE JUDGE